

### **REMARKS**

Claims 1-41 constitute the pending claims in the present application. Claims 1, 2, 15, 16, 19, 23, 28, 36-41, and 60 stand rejected. Claims 3-14, 17, 18, 20-22, 24-27, 43 and 44 are objected to as being dependent on a rejected base claim. Claims 29-35, 42, and 45-59 are withdrawn.

Claim 36 has been amended. Claims 39 and 41 have been canceled. Amendment or cancellation of the originally filed claims should in no way be construed as an acquiescence, narrowing, or surrender of any subject matter. The amendments are being made not only to point out with particularity and to claim the present invention, but also to expedite prosecution of the present application. Applicants reserve the option to prosecute further the originally filed claims or similar ones, in the instant or a subsequent patent application.

#### **Election/Restriction**

The Examiner notes Applicants election of Group I, with traverse, and election of species, polymer VI. The Examiner further notes, however, that claims 29-35, 42, and 45-59 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicants respectfully note that claims 29-35, 42, 45-53 and 59 are within elected Group I, as defined by the Examiner in the Action dated January 22, 2003. Further, claims 29-35, 42, 45-53 and 59 are dependent on generic claim 1, and dependent claims thereon. Applicants respectfully request these claims be no longer withdrawn from consideration.

#### **Rejection under 35 U.S.C 112 second paragraph**

Claims 36-41 stand rejected under 35 U.S.C. 112 second paragraph. Claim 36 has been amended to include the substituents L1, M1, M2, and Ms as originally recited in claims 39 and 41. Claims 37, 38, and 40 depend on claim 36. Applicants assert that the structure in claim 36 is adequately set out, and respectfully requests withdrawal of this rejection.

### **Rejection under 35 U.S.C. 102(b)**

Claims 1, 2, 15, 16, 23 and 28 stand rejected under 35 U.S.C. 102(b) as being anticipated by Wen et al. Applicants respectfully note that the publication date of the Wen et al. reference appears to be July 7, 2000. Since the publication date of this reference is less than one year prior to the effective filing date of the instant application, October 12, 2000, the Wen et al. reference does not qualify as 35 U.S.C. 102(b) prior art.

Applicants respectfully assert that Wen et al. does not disclose each and every element of claim 1, and the other rejected claims. For example, Wen et al. that is capable of inhibiting growth of a neoplasm upon treatment with electromagnetic radiation, as recited in claim 1 and the other rejected claims. Therefore, Applicants respectfully request the withdrawal of this rejection.

### **Rejection under 35 U.S.C. 103(a)**

Claims 1, 2, 19, 36-41, and 60 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al, U.S. Patent No. 6,166,173. Applicants respectfully traverse this rejection. Applicants submit that the instant application and U.S. Patent No. 6,166,173 were, at the time the instant invention was made, jointly owned by, or subject to a joint obligation of assignment to, Guilford Pharmaceuticals, Inc. and Johns Hopkins University. Thus, the '173 patent is not prior art under any of sections 35 U.S.C 102(e), (f) or (g) for purposes of §103 pursuant to 35 U.S.C. §103(c). Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

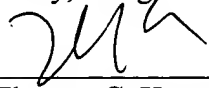
### **CONCLUSION**

In view of the foregoing remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-832-1000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this application be charged to **Deposit Account No. 06-1448**.

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Respectfully submitted,  
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